

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
MAMBO, LLC)	MB Docket No. 10-161
Petition for Waiver of Section 73.658(i))	
of the Commission's Rules (the Network)	
Representation Rule))	

To: The Chief, Media Bureau

**COMMENTS OF DEL CARIBE ORLANDO, LLC AND
DEL CARIBE PARTNERS, LLC IN SUPPORT OF PETITION FOR WAIVER**

Del Caribe Orlando, LLC and Del Caribe Partners, LLC, (collectively referred to herein as "Del Caribe") hereby respectfully submit their comments in support of the "*Petition for Waiver of Network Representation Rule, Section 73.658(i).*" This Petition, if granted, would waive 47 C.F.R. § 73.658(i), the so-called "Network Representation Rule" so as to allow the newly launched GenTV Spanish language network owned by Mambo, LLC to represent, *inter alia*, Del Caribe in the sale of non-network advertising. The Petition was filed March 8, 2010 by Mambo, LLC, and placed on Public Notice August 9, 2010 (See, DA 10-1455). For its comments in support of the Petition, Del Caribe states as follows:

1. Del Caribe Orlando, LLC is the licensee of WAWA-LD, a digital LPTV station licensed to Orlando, Florida, now operating on Channel 47. Del Caribe Partners, LLC, which has similar ownership to Del Caribe Orlando, LLC, pursuant to a Time Brokerage Agreement, provides programming for and is in the process of acquiring Low Power Television Station WALO-LP, licensed to West Palm Beach, Florida, which is now in analog format, but is soon to commence digital operation. Both Del Caribe entities have

entered into a Network Affiliation Agreement with Mambo, LLC and both are now airing Mambo's new and innovative GenTV network programming in the Spanish language on WAWA-LD and on WALO-LP.

2. Del Caribe is currently prohibited, pursuant to Section 73.658(i) of the Commission's Rules (the "Network Representation Rule"), from utilizing Mambo as its sales representative, because Mambo is a network entity that is affiliated with Del Caribe. That rule section provides as follows:

(i) No license shall be granted to a television broadcast station which is represented for the sale of non-network time by a network organization or by an organization directly or indirectly controlled by or under common control with a network organization, if the station has any contract, arrangement or understanding, express or implied, which provides for the affiliation of the station with such network organization: *Provided, however*, that this rule shall not be applicable to stations licensed to a network organization or to a subsidiary of a network organization.

3. The Network Representation Rule generally prohibits a broadcast television affiliate (except a network owned and operated affiliate) from being represented by its network in the sale of non-network advertising. Mambo's petition seeks a permanent waiver of the Network Representation Rule for the affiliates of GenTV. If granted, that waiver would make it possible for GenTV to act as sales representative for WAWA-LD and WALO-LP on an ongoing basis.

4. Del Caribe is a recent "startup" Spanish language broadcaster, the media interests of which consist only of WAWA-LD and WALO-LP. Del Caribe does not yet have a national/regional sales staff, and it is extremely important to Del Caribe's long-term viability that Mambo be able to provide that service. The instant waiver would

obviate the need for Del Caribe to retain and maintain its own national/regional sales force.

5. Mambo's GenTV network is a new Spanish language program service that targets Hispanic persons of Latin American, non-Mexican descent. At the same time, Del Caribe is launching its two-station, Spanish language LPTV broadcast operations. The carriage of GenTV programming by WAWA-LD and WALO-LP has commenced. Del Caribe has the exclusive right to air the GenTV programming in Florida. Del Caribe is of the view that the unique GenTV programming is in the best interests of the over-the-air viewers of WAWA-LD and WALO-LP. Del Caribe is airing local programming.

6. The Network Representation Rule was enacted a half-century ago for the clear purpose of preventing anticompetitive actions by networks. Because the effect of the Mambo waiver will be to *encourage* and *create* competition and diversity in Spanish language broadcasting, the purpose of the rule will not be frustrated, but will be satisfied, by the waiver. The Commission last considered eliminating the Rule in 1990, but decided not to do so, finding that some networks and affiliates might have an incentive to reach collusive agreements to raise network and national spot advertising prices above competitive levels. In reaching that conclusion, the Commission implicitly assumed that the competition or rivalry among the existing networks was not sufficient to prevent any such collusion from harming competition in the television advertising market. That assumption is, in today's marketplace, and especially in today's Spanish language broadcasting marketplace, completely misplaced. The waiver sought by Mambo is absolutely justified and supportable.

7. As Mambo illustrates in its waiver request, it is difficult for Spanish language television stations to compete for now-scarce advertising revenues among stations with English language broadcasting. At the same time, it is even more difficult for stations affiliated with a startup network to compete against other, much larger Spanish language broadcasters affiliated with the large Spanish language network entities such as Telemundo, Univision and Azteca. Each of these large Spanish language networks has been granted a waiver of Section 73.658(i).¹ The Telemundo and Univision permanent waivers were granted in 1990, and a permanent waiver was granted to Azteca in 2003. Two more proposals for permanent waivers were proposed by the Commission in 2009 (Estrella TV) and in May of this year (MegaTV). Estrella TV was granted Permanent Waiver by the Commission on May 6, 2010. While the Commission cannot treat similarly situated parties differently, and therefore it is highly likely that the Mambo, LLC waiver request will be granted, it is urgent that Del Caribe, which has recently commenced operations, be able to commence sales operations. It is urged that the Commission act expeditiously on this waiver request. Del Caribe's broadcast operations using Mambo's innovative and unique Spanish language GenTV network programming must be supported by the sale of national/regional advertising, and Mambo should be authorized at the earliest possible time to provide sales representation to its affiliates, which at the moment consist of Del Caribe's stations.

¹ See, *Amendment of §73.658(i) of the Commission's Rules*, 5 FCC Rcd. 7280 (1990) (granting permanent waivers of the rule to Univision Communications, Inc. and Telemundo Group, Inc.); *Azteca International Corporation Petition for Waiver of §73.658(i) of the Commission's Rules*, 18 FCC Rcd 10662 (MB 2003) (granting permanent waiver to Azteca America); See also the *Public Notice*, 24 FCC Rcd.12925 (2009) (§73.658(i) waiver proposed for Estrella TV) and the *Public Notice*, DA 10-775, in MB Docket No. 10-89, released May 6, 2010 (permanent waiver proposed for MegaTV).

Therefore, the foregoing considered, Del Caribe urges in the strongest terms that the Commission expeditiously grant the Mambo request for waiver of the Network Representation Rule, permitting Mambo, LLC to represent WAWA-LD and WALO-LP in connection with the sale of non-network advertising.

Respectfully submitted,

Del Caribe Orlando, LLC and Del Caribe Partners, LLC

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September 8, 2010

CERTIFICATE OF SERVICE

I, Christopher D. Imlay, do hereby certify that I caused to be mailed, via first class U.S. Mail, postage prepaid, a copy of the foregoing COMMENTS OF DEL CARIBE ORLANDO, LLC AND DEL CARIBE PARTNERS, LLC IN SUPPORT OF PETITION FOR WAIVER to the following, this 8th day of September, 2010.

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